

## D. Checklist Item 9 - Numbering Administration

### 1. Background

Section 271(c)(2)(B)(ix) requires "nondiscriminatory access to telephone numbers" for assignment to the telephone exchange service customers of CLECs. Such access must be provided until the establishment of telecommunications numbering administration guidelines, plans, or rules. After that, Qwest must comply with such guidelines, plans, or rules.<sup>33</sup> The FCC has said that nondiscriminatory access to telephone numbers requires a LEC "to permit competing providers access to these numbers that is identical to the access that the LEC provides to itself."<sup>34</sup> The FCC will look specifically at the circumstances and business practices governing Central Office code administration.<sup>35</sup> The FCC also prohibits LECs from unduly favoring or disfavoring any particular segment or group of telecommunications consumers.<sup>36</sup>

### 2. Overview

The parties raised a total of 3 issues for discussion on Checklist Item 9. Of those issues, 1 was unresolved and was presented to the NDPSC with the facilitator's proposed resolution, and 2 issues were deferred to Workshop One.

The unresolved issue is discussed in the Paper Workshop Report beginning on page 50. The issue is:

- Qwest's Provisioning of CLEC NXX Prefixes.

The issues deferred to another Checklist item discussions are:

- Local Routing Number (LRN) – deferred to checklist 1, Workshop One. Qwest states that, while this issue was to be discussed with Checklist 1 issues, the issue was resolved prior to the workshop when Qwest adopted AT&T's language on this issue that now appears at SGAT section 7.2.2.1.6.
- Number Reassignment – deferred to checklist 11, Workshop One. Qwest states that this issue concerning the reassignment, or duplicate assignment of ported numbers was resolved prior to the workshop on Checklist 11 issues by reporting the trouble to its number portability database vendor who fixed the problem on October 3, 1999.

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<sup>33</sup> 47 U.S.C. § 271(c)(2)(B)(ix).

<sup>34</sup> In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 Local Competition Second Report and Order, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, FCC 96-333, 11 FCC Rcd at 19446-47, (released August 8, 1996) ("Local Competition Second Report and Order").

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at amendment to Part 52, Subpart B, 52.9 (a)(2).

### **3. Analysis of Evidence on Unresolved Issues**

#### ***a. Qwest's Provisioning of CLEC NXX Prefixes***

AT&T expressed concern about experiences relating to slow provisioning by Qwest of new CLEC prefixes. Qwest stated that the problems have been corrected. The facilitator stated that Qwest and AT&T appear to agree that actual Qwest performance under ROC Performance Measure NP-1 will provide the best evidence on the question of parity of service. AT&T recommends deferring consideration of the issue until completion of the ROC OSS test. Qwest requests a conditional determination that Qwest complies with this checklist item, subject to review of audited performance results.

The facilitator recommended that Qwest has supported a finding that the checklist requirement has been met, subject to the completion and Commission consideration of the ROC OSS testing.

The NDPSC agrees with the facilitator's recommendation.

Performance Indicator Definition (PID) NP-1 evaluates Qwest's timeliness in activating NXX codes. Section IX.B of the Liberty audit contains Liberty's findings on NP-1. The NDPSC will discuss the findings of the Liberty audit in the *ROC OSS Test* section of this report.

### **4. Conclusion**

Qwest should be deemed to be in compliance with the requirements of Checklist Item 9.

## **E. Checklist Item 10 - Databases and Associated Signaling**

### **1. Background**

Section 271(c)(2)(B)(x) of the competitive checklist requires "nondiscriminatory access to databases and associated signaling necessary for call routing and completion."<sup>37</sup> The FCC has designated signaling networks and call-related databases as network elements, and has concluded that incumbent LECs must provide for the exchange between CLECs of signaling information necessary to exchange traffic and access call related database.<sup>38</sup> The FCC has identified the scope of required access as including "(1) signaling networks, including signaling links and signaling transfer points;

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<sup>37</sup> 47 U.S.C. § 271(c)(2)(B)(x)

<sup>38</sup> 47 C.F.R. § 51.319; Second BellSouth Louisiana 271 Order, ¶ 266.

(2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems ("SMS"); and to design, create, test, and deploy Advanced Intelligent Network ("AIN") based services at the SMS through a Service Creation Environment ("SCE").<sup>39</sup>

## **2. Overview**

The parties raised a total of 6 issues for discussion on Checklist Item 10. All of those issues were either resolved between the parties or the facilitator found that Qwest's SGAT changes reasonably responded to the concerns of the party that raised concerns.

The issues resolved between the parties are discussed in the Paper Workshop Report beginning on page 51. The resolved issues include:

- Commingling of Access to Signaling in the SGAT
- Requiring the Use of Intermediate Frames
- Language Consistency between SGAT Sections 9.15.1.2 and 9.15.1.4
- Need for Established Time Frames for Data Uploads
- Electronic Access to LIDB Storage
- Overload Conditions

## **3. Analysis of Evidence on Unresolved Issues**

No unresolved issues relating to Checklist Item 10 were presented to the NDPSC for resolution, and no issues were deferred.

## **4. Conclusion**

Qwest should be deemed to be in compliance with the requirements of Checklist Item 10.

## **F. Checklist Item 12 - Dialing Parity**

### **1. Background**

Section 271(c)(2)(B)(xii) requires "nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)." Section 251(b)(3)

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<sup>39</sup> Second BellSouth Louisiana 271 Order, ¶ 267; Bell Atlantic New York Order, ¶ 365.

creates "the duty to provide dialing parity to competing providers of telephone exchange service". Section 153(15) of the Act defines parity as requiring that a CLEC be able to:

*"... provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier)."*

## **2. Overview**

The parties raised only 1 issue for discussion on Checklist Item 12. That issue was resolved between the parties. In its Second Report and Order implementing the local competition provisions of the Act, the FCC determined that performance measures are unnecessary for this checklist item,<sup>40</sup> and, therefore, the ROC has not established any performance measures for Checklist Item 12.

The issue resolved between the parties is discussed in the Paper Workshop Report on page 54. The resolved issue relates to Dialing Parity for Lines Provisioned by UNE-Ps.

## **3. Analysis of Evidence on Unresolved Issues**

No unresolved issues relating to Checklist Item 12 were presented to the NDPSC for resolution, and no issues were deferred.

## **4. Conclusion**

Qwest should be deemed to be in compliance with the requirements of Checklist Item 12.

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<sup>40</sup> Second Report and Order and Memorandum Opinion and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98 *et al.*, FCC 96-333, 11 FCC Rcd 19392 ¶ 162 (Aug. 8, 1996).

#### **IV. CONSULTATIVE REPORT ON GROUP 2 CHECKLIST ITEMS**

This report considers unresolved issues on checklist item numbers 1 (interconnection and collocation), 11 (local number portability), 13 (reciprocal compensation) and 14 (resale). The record on these checklist items was developed through workshops, written filings including direct testimony of Qwest, intervenor comments, rebuttal comments, briefs and final Qwest SGAT language. Formal hearing was held before the NDPSC.

The workshop on the Group 2 checklist items consisted of three sessions held March 26-28, 2000, June 4-8, 2000 and June 25-28, 2000. Qwest filed written testimony on July 31, 2000. On September 5, 2000, the following intervenors filed testimony: MCI WorldCom, Inc., McLeodUSA Telecommunications Services, Inc., AT&T Communications of the Mountain States, Inc., AT&T Communications of the Midwest, Inc., TCG affiliates, Electric Lightwave, Inc., NEXTLINK Utah, Inc., Jato Communications, Inc., Wyoming Consumer Advocate Staff, Sprint Communications Company L.P., Net Wright LLC, OPCOM, Inc., Visionary Communications, Wyoming.com and Contact Communications.

Qwest and Net Wright filed rebuttal testimony on September 18, 2000. WorldCom filed rebuttal testimony on September 29, 2000. Rhythms Links, Inc. introduced testimony on October 5, 2000 that was marked as an exhibit. The following parties filed briefs on April 10, 2001: Qwest, AT&T, XO/ELI, Sprint, Visionary and InTTec and the Wyoming Consumer Advocate Staff.

On May 15, 2001, the facilitator filed his report on checklist item numbers 1, 11, 13 and 14. The report identified agreed upon and unresolved issues and the facilitator's proposed resolutions for unresolved issues.

On May 29, 2001, comments on the report were filed by both Qwest and by AT&T.

On June 27, 2001, the NDPSC issued a Notice of Hearing scheduling a formal hearing for July 23, 2001, in the Commission hearing room, State Capitol, 12<sup>th</sup> Floor, Bismarck, North Dakota. The NDPSC stated that it would consider issues that have been left unresolved in final workshop report on checklist item numbers 1, 11, 13, and 14 and that have not been deferred to another portion of this 271 compliance investigation.

A formal hearing was held as scheduled on July 23, 2001. Qwest appeared at the hearing and presented testimony and evidence in support of its position. There was no appearance by intervenors. On August 20, 2001, Qwest filed a post-hearing memorandum on Group 2 issues.

On October 15, 2001, the NDPSC issued its Interim Consultative Report on Group 2 Checklist Items.

On October 30, 2001, Qwest filed a Petition for Reconsideration on the Interim Group 2 Consultative Report. Qwest requested that the NDPSC reconsider its recommendation regarding collocation intervals under checklist item 1. On November 21, the NDPSC granted Qwest's petition, and on December 12, 2001, the NDPSC held an informal hearing on Qwest's petition for reconsideration.

On January 16, 2002, the Commission issued its First Amended Interim Consultative Report on Group 2 Checklist Items, which included some revisions to the Commission's determinations and recommendations regarding collocation intervals.

The following reflects the NDPSC's Consultative Report on the Group 2 Checklist Items.

### **A. Checklist Item 1 - Interconnection**

#### **1. Background**

Section 271(c)(2)(B)(i) of the Telecommunications Act addresses the competitive checklist item involving interconnection: [An ILEC must provide] "...interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1)..."<sup>41</sup> Section 251(c)(2) imposes upon Qwest:

*[t]he duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—*

- (A) for the transmission and routing of telephone exchange service and exchange access;*
- (B) at any technically feasible point within the carrier's network;*
- (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and*
- (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and Section 252..."*<sup>42</sup>

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<sup>41</sup> 47 U.S.C. § 271.

<sup>42</sup> 47 U.S.C. § 251(c)(2)

The FCC has defined the term interconnection as "...the linking of two networks for the mutual exchange of traffic."<sup>43</sup>

## **2. Overview**

The parties raised and resolved a total of 40 issues related to the interconnection aspects of Checklist Item 1 prior to filing briefs. Twelve remaining issues were presented to the NDPSC with a facilitator's proposed resolution.

The issues resolved between the parties are discussed in the facilitator's Report on Checklist Items 1, 11, 13, and 14 (Workshop One Report) beginning on page 19. The resolved issues include:

- Interconnection Service Quality
- Limiting Interconnection Options
- Single Points of Interconnection in Each LATA
- Hub Interconnection Arrangements
- Charges for Interconnection Trunking
- Limits on LIS Trunk Traffic Types
- Reciprocal Compensation for Toll Traffic Exchanged
- Defining Jointly Provided Switched Access Traffic
- One-Way Trunk Groups
- Obliging CLECs to Provide Transport to Qwest
- Interconnection Over Direct Trunks Where Available
- Acceptance of Transit Traffic
- Applying Tariff Prices to Signaling for LIS Trunks
- 64 CCC Availability
- MF Signaling
- LIS Trunk Forecasting
- Commission Monitoring of LIS Trunk Provisioning
- Switch Growth Time Intervals
- Responsibility to Build to Forecasts
- Information Exchange for Joint Planning Meetings
- Other Planning Information
- Updates to Information Qwest Makes Available Through Databases
- Protection of Sensitive Forecast Information
- Resizing Underutilized Trunk Groups
- Assessment of Construction Charges
- Trunking Service Standards
- Preference for Two-Way Trunking
- Exchange of Traffic Only in Qwest Local Calling Areas

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<sup>43</sup> 47 C.F.R. § 51.5

- Alternate Traffic Routing
- Delivery of CLEC Traffic to Qwest Remote Switches
- LIS Acceptance Testing
- Sharing the Costs of Testing
- Repair Testing
- LIS Trunk Ordering Information
- Using the LERG to Obtain Ordering Information
- Channel Information For Entrance Facilities
- Joint Planning Meetings
- Provisioning Intervals for Interconnection Trunks
- Defining the Service Date for LIS Charges

The unresolved interconnection issues are discussed in the Workshop One Report beginning on page 33. The issues include:

- Indemnification For Failure to Meet Performance Standards
- Entrance Facilities as Interconnection Points
- EICT Charges for Interconnection Through Collocation
- Mid-Span Meet POIs
- Routing of Qwest One-Way Trunks
- Direct Trunked Transport in Excess of 50 Miles in Length
- Multi-Frequency Trunking
- Obligation to Build to Forecast Levels
- Interconnection at Qwest Access Tandem Switches
- Inclusion of IP Telephony as Switched Access in the SGAT
- Charges for Providing Billing Records
- Combining Traffic Types on the Same Trunk Group

### **3. Analysis of Evidence on Unresolved Issues**

#### ***a. Indemnification For Failure to Meet Performance Standards***

AT&T proposed an SGAT section that would hold CLECs harmless in the event that Qwest failed to meet the service quality standards of Section 7.1.1.1. AT&T characterized this language as an "incentive" for Qwest to perform adequately for "competitors".

Qwest objected to AT&T's proposed language on several grounds, including the fact that this provision would duplicate the Post-Entry Performance Plan (PEPP).

The facilitator determined that AT&T's proposal was not balanced and did not adequately consider the unique circumstances of a particular state's performance standards and, therefore, recommended that it should not be adopted in the context of interconnection. Moreover, the facilitator noted that the upcoming workshop on general

SGAT terms and conditions and the PEPP Workshops would provide more appropriate opportunities to address the broader aspects of AT&T's request. The facilitator recommended there is not a sound basis for concluding that Qwest fails to comply with the Section 271 checklist on the grounds that its SGAT fails to include a provision indemnifying CLECs in the event of a failure to meet the standards applicable to interconnection.

The NDPSC agrees with the facilitator's recommendation.

***b. Entrance Facilities at Interconnection Points***

AT&T proposed changes to SGAT Section 7.1.2.1 to permit it to use a portion of the entrance facilities it has already acquired under interstate tariffs to provide InterLATA service to also provide for interconnection to exchange local traffic. AT&T's request raised three considerations:

Qwest raised the following concerns in its brief on the issue:

- Should CLECs be able to use such facilities to gain access to unbundled network elements (UNEs);
- Should CLECs be able to combine local traffic with other types of traffic on the same trunk groups; and
- Whether the portion of such trunk groups used to provide for the exchange of local traffic should be priced at TELRIC rates, rather than at the interstate tariff rate under which a CLEC initially secured the trunks.

As to the first consideration, Qwest agreed to allow interconnection for access to UNEs using entrance facilities in accordance with the resolution of this issue in Washington. The facilitator recommended that Qwest should change its SGAT to reflect the commitment it made in Washington. The facilitator further recommended that the two remaining parts of this issue should be resolved in the Commingling of InterLATA and Local Traffic on the Same Trunk Group's issue in the Reciprocal Compensation portion of the facilitator's report.

The NDPSC agrees with the facilitator's recommendation and finds that Qwest has reflected the recommended change in its SGAT at Section 7.1.2.1.

***c. EICT Charges for Interconnection Through Collocation***

AT&T recommended a change to SGAT Section 7.1.2.2 to: (a) eliminate the requirement that CLECs pay for interconnection tie pairs; and (b) remove EICT charge references from Section 7.3.1.2.

Qwest agreed in its brief to accept the resolution of this issue as proposed in the draft Washington Order.

The facilitator determined the draft Washington Order reflected a resolution of this issue that is in accord with the FCC requirements and comports with AT&T's request. The facilitator recommended this issue be considered to be resolved upon Qwest making the SGAT changes reflecting the Washington Order.

The NDPSC agrees with the facilitator's recommendation and finds that Qwest has made the required SGAT changes at Sections 7.3.1.2.1, 7.3.1.2.2, and 7.1.2.2.

#### ***d. Mid-Span Meet POIs***

AT&T objected to the requirement that mid-span meet POIs be required to be within Qwest wire center boundaries and sought the right to interconnect in this fashion at any technically feasible point. AT&T also objected to precluding the use of mid-span meet points to gain access to UNEs.

Qwest agreed to allow this form of interconnection to be used for access to UNEs, provided that the CLEC pay the UNE rate for the entire facility.

The facilitator recommended that Qwest SGAT be modified to allow this form of interconnection for access to UNEs. The modification should also allow CLECs to pay TELRIC rates for the proportion of the facility used to secure access to UNEs under a rule that apportions costs first by assigning to UNE access the portion of the facilities that would be required for UNEs in the absence of a concurrent use for interconnection.

The NDPSC agrees with the facilitator's recommendation and finds that Qwest has made the recommended modification to its SGAT at Section 7.1.2.3.

#### ***e. Routing of Qwest One-Way Trunks***

Where a CLEC chooses one-way trunks, Qwest must install its own one-way trunks to terminate its traffic to that interconnecting CLEC. AT&T proposed that language be incorporated into SGAT Section 7.2.2.1.2.1 that would allow the CLEC, rather than Qwest, to control the routing of Qwest one-way trunks back to the CLEC in order to prevent Qwest from penalizing a CLEC for choosing one-way trunks.

The facilitator recommended that Qwest should have a reasonable degree of control over the interconnection points and routing for the one-way trunks that it has to build because CLECs have chosen to interconnect with Qwest through one-way trunks. The facilitator recognized that the Act does not state or imply that CLECs may choose Qwest's points of interconnection.

The NDPSC agrees with the facilitator's recommendation.

***f. Direct Trunked Transport in Excess of 50 Miles in Length***

Qwest proposed a new SGAT section 7.2.2.1.5 to address transport trunks in excess of 50 miles in length. Qwest considered this section necessary after it agreed to allow interconnection at access tandems, which could necessitate direct trunk transport lengths of several hundred miles.

AT&T argued against Qwest's SGAT section as denying it the right to choose the most efficient interconnection points. Qwest responded that the FCC clearly contemplated distance limitations on ILEC build-outs. The FCC stated, "[r]egarding the distance from an incumbent LEC's premises that an incumbent should be required to build out facilities for meet point arrangements, we believe that the parties and state commissions are in a better position than the Commission to determine the appropriate distance that would constitute the required reasonable accommodation of interconnection."<sup>44</sup>

The facilitator determined the issue was essentially an economic one and the decision should be made with the kinds of data and analysis that one finds in costing dockets. Without such evidence, the facilitator recommended there was not a sound basis for deciding whether the proposed 50-mile limit is appropriate and therefore Qwest's proposed SGAT provisions should be eliminated.

Qwest requested a modification of the facilitator's recommendation. Qwest noted that although the Act requires ILECs to permit CLECs the opportunity to interconnect with an incumbent's network at any technically feasible point, it does not say that Qwest must build those facilities for the CLECs without limitation. Referring the issue to a cost docket does not resolve Qwest's concerns because a cost docket develops average cost based rates. High cost scenarios are not priced out. It is assumed that average costs will allow Qwest to recover its costs over time. If, however, the CLECs pick and choose the locations where Qwest must build on their behalf, Qwest may have no ability to recover its costs. Moreover, the costs of these facilities are recovered, for the most part, through usage based payments or reciprocal compensation. Thus, if traffic volumes are small, Qwest may not be able to recover its costs for years, if ever. Given the costs of providing these interconnections.

Qwest requested the NDPSC to adopt the position from the Utah Commission Report, which allowed the parties to bring the issue to the state commission to be decided upon an individual case basis if the parties cannot reach agreement. Qwest requested modification of the facilitator's report in accordance with Section 7.2.2.1.5 of the SGAT.

Although the NDPSC's general powers set forth in North Dakota Century Code § 49-21-01.7 do not specifically include resolution of this type of dispute, the NDPSC's

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<sup>44</sup> *Local Competition Order* at ¶ 553 (emphasis added).

powers under subsection 2 include the power to require telecommunication companies to conform to "orders of the commission not contrary to law" and under subsection 4 to "[c]ompel obedience of its lawful orders . . . ." Accordingly, the Commission has the power to enforce its orders issued in furtherance of the Commission's more specific powers set forth in Chapter 49-21 including the provisions of the N.D.C.C. § 49-21-09 regarding interconnection between telecommunication companies. That section empowers the Commission to resolve disagreements regarding interconnection between telecommunication companies including the authority to prescribe reasonable compensation, terms, and conditions. It should be noted that the NDPSC's authority over interconnection under the Act is limited under N.D.C.C. § 49-21-01.7(14) in that it may not impose obligations on a telecommunications company that are different or greater than obligations imposed under the Act. However, with regard to this issue, the FCC has imposed no specific limitations, and with regard to the build out of facilities for meet point arrangements, the FCC has stated that state commissions are in a better position than the FCC determine the appropriate distance that would constitute the required reasonable accommodation of interconnection.<sup>45</sup>

The NDPSC modifies the facilitator's report on this issue. Qwest's proposed modification strikes the correct balance between fostering interconnection and insuring that CLECs do not ask Qwest to build on their behalf even when it is uneconomic to do so. We, therefore, adopt the Utah Commission's position and approve Qwest's SGAT language at Section 7.2.2.1.5.

#### ***g. Multi-Frequency Trunking***

As indicated in the Resolved Issues portion of the Workshop Report, Qwest agreed to provide multi-frequency trunking in instances where Qwest switches are without SS7 capability. AT&T proposed to add language to SGAT Section 7.2.2.6.3 that would require such trunking where there is SS7 capability, but where it cannot be provided over multiple routes. AT&T's concern is for the case where capability will be lost by a link failure for which there is not an alternate path.

Qwest argued that it does not provide such redundant capability for itself when it must rely on that single link routing and that the FCC has not addressed the issue. Qwest also said that it should not be required to provide such redundancy on a generally available basis because it falls outside reasonably foreseeable CLEC demand.

The facilitator recommended that the SGAT should be changed to add multi-frequency trunking when the Qwest central office does not have SS7 diverse routing because the operational consequences are greater for CLECs who must depend on a single route. Sophisticated customers may make carrier-selection decisions on the basis of the difference in those consequences.

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<sup>45</sup> *Id.*

The NDPSC agrees with the facilitator's recommendation and finds that Qwest has made the recommended change at Section 7.2.2.6.3 of the SGAT.

#### ***h. Obligation to Build to Forecast Levels***

The parties disagreed over the language in SGAT Section 7.2.2.8.6 regarding which forecast should serve as the measure of Qwest's obligation to provide interconnection trunks where Qwest's forecast of a CLEC's needs are lower than the CLEC's own forecast. Qwest agreed that it would use a CLEC's forecast but wanted a deposit before doing so in order not to be at risk for recovery of its installation costs should the CLEC's actual needs prove to be lower than the forecast at issue. Qwest's basis for requiring and refunding deposits was a target of 50% of forecasted usage.

The facilitator recommended this issue be resolved by requiring Qwest to build to the lower of the two forecasts (typically Qwest's) with no charge. If a CLEC has failed to utilize its trunks for 18 continuous months at a rate of at least 50%, Qwest will still build to the CLEC's higher forecast if the CLEC pays a deposit, with the deposit being refunded according to actual trunk usage thereafter. The trunk utilization rate used to determine whether a deposit is required is to be based on actual trunks in service, not the number forecasted. The deposit must be refunded if anyone, including Qwest, uses the trunk within a six-month period.

The NDPSC agrees with the facilitator's recommendation and finds that Qwest has made the required modifications to its SGAT at Sections 7.2.2.8.6, 7.2.2.8.6.1, and 7.2.2.8.6.2.

#### ***i. Interconnection at Qwest Access Tandem Switches***

Qwest's initial SGAT Section 7.2.9.6 precluded interconnection at access-tandem switches, allowing interconnection only at local-tandem and end-office switches.

Qwest stated that it divides its networks in a fashion that produce what it calls "local" tandem switches and "access" tandem switches. Qwest said that its network architecture has historically separated local and long distance traffic, and that it has separate, mature trunk groups in place to carry both local and long distance calls. These trunk groups are sized to accommodate the call volumes that Qwest has historically experienced with growth that can be planned with some precision.

AT&T argued that the SGAT provision violates a requirement of Section 251(c)(2)(B) of the Act that interconnection be permitted at any technically feasible point, and that Qwest's refusal to allow interconnection at the access tandems would require AT&T to bear the unnecessary expense of trunking to Qwest end-office switches merely to serve a single customer.

Qwest responded that CLECs are effectively asking the Commission to eviscerate Qwest's long-standing network distinction by allowing CLECs to interconnect at Qwest's access tandems and therefore place the CLEC's local traffic over Qwest's traditional long-distance network.

Qwest had agreed to some easing of restrictions on interconnection at its access tandem switches, and its brief, Qwest agreed to a significant additional change, by accepting the resolution of this issue as set forth in the *Draft Washington Order*, which allowed interconnection at Qwest access tandems subject to certain exceptions.<sup>46</sup> Paragraph 147 of that order provides:

*Qwest must revise the SGAT to permit interconnection for the exchange of local traffic at the point determined by the CLEC, in conformance with the language proposed by AT&T. Qwest must not require interconnection at the local tandem, at least in those circumstances when traffic volumes do not justify direct connections to the local tandem. Qwest must do so regardless of whether capacity at the access tandem is exhausted or forecasted to exhaust unless Qwest agrees to provide interconnection facilities to the local tandems or end offices served by the access tandem at the same cost to the CLEC as interconnection at the access tandem.*

The facilitator noted that the *Draft Washington Order* imposed two potential qualifications that eliminate requirements to interconnect at local tandems or end offices. The first qualification leaves open the door for requiring interconnection at local tandems or end offices where justified by traffic volumes. The second qualification allows Qwest to require interconnection at local tandems or end offices, provided that Qwest makes such interconnection available at a cost no greater than would be the case if interconnection had occurred in the access tandem. The facilitator stated that these qualifications allow Qwest to limit interconnection at access tandems even in the absence of showing that such interconnection is technically feasible. He said that narrowing these qualifications, however can make their application consistent with the concept of technical feasibility.

The facilitator noted that Qwest conceded that technical feasibility of interconnection at its access tandems, and said that in the *SWBT Texas 271 Order* the FCC demonstrated that technical feasibility is the correct standard by stating that the "[I]ncumbent LEC is relieved of its obligation to provide interconnection at a particular point in its network only if it proves to the state public utility commission that interconnection at that point is technically feasible."<sup>47</sup>

The facilitator recommended replacement of Section 7.2.2.9.6 of the SGAT with the following language proposed by the facilitator.

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<sup>46</sup> Qwest Brief at page 3, citing the *Draft Order*, Washington Utilities and Transportation Commission, Docket No. UT-003022 & 003040, February 22, 2001 at ¶ 146 and 147.

<sup>47</sup> *Texas 271 Order* at ¶ 78.

*The parties shall terminate Exchange Access Service (EAS/Local) traffic on tandem or end office switches. When there is a DS1 level of traffic (512 BHCCS) between CLEC's switch and a Qwest End Office Switch, Qwest may request CLEC to order a direct trunk group to the Qwest End Office Switch. CLEC shall comply with that request unless it can demonstrate that such compliance will impose upon it a material adverse economic or operations impact. Furthermore, Qwest may propose to provide interconnection facilities to the local tandems or end offices served by the access tandem at the same cost to the CLEC as interconnection at the access tandem. If the CLEC provides a written statement of its objections to a Qwest cost-equivalency proposal, Qwest may require it only: (a) upon demonstrating that a failure to do so will have a material adverse affect on the operation of its network and (b) upon a finding that doing so will have no material adverse impact on the operation of the CLEC, as compared with interconnection at such access tandem.*

The facilitator also recommended changes to Section 7.1.1 to provide that new or continued connections to a Qwest's access tandem are not required where Qwest can demonstrate that such connections present a risk of switch exhaust and that Qwest does not make similar use of its network to transport the local calls of its own or affiliate's end users. The facilitator further recommended deletion of Section 7.4.5 and the last two sentences of Section 4.11.2 of the SGAT that limit traffic exchange at access tandems.

Qwest generally accepted the facilitator's recommendation, but sought one clarification to the proposed language for Section 7.2.2.9.6 of the SGAT. Qwest is concerned that the facilitator's Report could be read to allow CLECs to carry all their traffic through access tandems. Qwest said this could cause monumental problems that would harm Qwest and CLEC customers alike. Qwest's long-distance network is simply not designed to handle all the long distance traffic and a substantial and increasing percentage of local traffic. Qwest proposed to require CLECs to utilize direct trunks (move away from the access tandem and create a direct connection between their switch and the end office that serves the increased volume of traffic) when industry recognized engineering standards warrant the transition. This is known as the "512 CCS Rule." 512 CCS (centum call seconds) is the equivalent of one DS-1 worth of traffic. Qwest argued that when the 512 CCS standard is met, it is generally more economic from a cost perspective and less onerous from a traffic volume perspective to install direct trunks.

Qwest requested modification of the Workshop Report recommendation on this issue to clarify that Qwest may require CLECs to transition away from tandem trunking and to direct trunks when the 512 CCS rule is met. Qwest states that the 512 CCS rule will protect Qwest, CLECs, and end users from unnecessary call blockage. Qwest also stated that CLECs do not have difficulty with the 512 CCS standard, and that when

discussing interconnection with the access tandem, CLECs have not challenged the 512 CCS rule and have recognized its appropriateness.

The NDPSC agrees with the facilitator's recommendation and rejects Qwest's request to modify the facilitator's recommended language for Section 7.2.2.9.6. The NDPSC finds that the modification requested by Qwest would shift the burden of showing technical infeasibility to the CLECs rather than Qwest. The FCC has clearly placed the burden on the "incumbent LEC to prove to the state commission, with clear and convincing evidence, that specific and significant adverse impacts would result from the requested interconnection or access."<sup>48</sup>

The NDPSC finds that Qwest has made the recommended changes to Sections 7.1.1, and 7.4.5 of the SGAT. Qwest, in its North Dakota Second Revision dated October 25, 2001, has removed the last two sentences of Section 4.11.2 and has incorporated the facilitator's recommended language for Section 7.2.2.9.6.

#### ***j. Inclusion of IP Telephony as Switched Access in the SGAT***

Qwest initially sought to include Internet Protocol (IP) telephony as "switched access" traffic in the SGAT. AT&T objected on the basis that the FCC has exempted such traffic from access charges. Qwest agreed to remove IP telephony language from SGAT Sections 4.39, 4.57, and 7.5.1.

The facilitator determined that Qwest has removed the disputed portions of the SGAT directly addressing IP telephony. Other sections of the SGAT that were raised by AT&T address Internet-bound traffic generally, not IP telephony particularly. That issue is addressed later in the Reciprocal Compensation sections of the Workshop Report. The facilitator recommended that a foundation had not been laid for striking any additional language from the SGAT to bring it into compliance with this checklist item.

The NDPSC agrees with the facilitator's recommendation.

#### ***k. Charges for Providing Billing Records***

SGAT Sections 7.5.4 and 7.6.3 allow Qwest to charge CLECs for providing billing records. Section 7.5.4 applies when local carriers must exchange records to bill an interexchange carrier for jointly provided switched access and data base inquiries. Section 7.6.3 applies to transit traffic, requiring payment when a carrier seeks information necessary to bill the originating carrier.

WCOM objected to the Qwest charges for providing these records because each party must provide these records to the other and historically neither has charged for

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<sup>48</sup> *Local Competition Order*, § 203

doing so. WCOM raised this issue in its original comments, but did not file a brief. It should be noted that WCOM is not an intervenor in the North Dakota proceeding.

The facilitator determined that the charge for billing records is reciprocal and the need for the service in a clear incident of interconnection. The facilitator recommended that the charges are appropriate and that there is no basis for questioning the provisions of the SGAT requiring payment of the charges.

The NDPSC agrees with the facilitator's recommendation.

### ***I. Combining Traffic Types on the Same Trunk Group***

Sprint objected to the separate trunk group requirements of SGAT Section 7.2.2.9.3.2, which it contended would require inefficient overlay networks to mirror "old" incumbent networks.

The facilitator noted that this issue is resolved in the Commingling of InterLATA and Local Traffic on the Same Trunk Group issues in the Reciprocal Compensation section of the Workshop Report.

The NDPSC agrees with the facilitator's recommendations.

## **4. Conclusion**

Qwest should be deemed to be in compliance with the requirements of Checklist Item 1 – Interconnection.

## **B. Checklist Item 1 – Collocation**

### **1. Background**

Pursuant to 47 U.S.C. § 251(c)(6), Qwest must:

*... provide, on rates, terms and conditions that are just, reasonable, and nondiscriminatory, for the physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the state commission that physical collocation is not practical for technical reasons or because of space limitations.*

47 C.F.R. § 51.323(a) specifies that, "an incumbent LEC shall provide physical collocation and virtual collocation to requesting telecommunications carriers." Physical

collocation is essentially an offering that enables the requesting carrier to place its own equipment in the premises of the incumbent for interconnection and access to UNEs. Virtual collocation occurs when the incumbent provides the equipment for CLEC use. In order to satisfy this checklist item, Qwest must demonstrate compliance with the collocation provisions of the Act and the FCC regulations.

## **2. Overview**

The parties raised a total of 73 issues for discussion on collocation. Of these issues, 54 were resolved before the briefs were filed and the facilitator determined 4 issues should be addressed in other contexts. Fifteen issues were presented to the NDPSC with the facilitator's proposed resolution.

The issues resolved between the parties are discussed in the Paper Workshop Report beginning on page 52. The resolved issues include.

- Limiting Collocation to Wire Centers
- ICDF Collocation
- Virtual Collocation Repair
- Maximum Caged Physical Collocation Space
- Minimum Space Footage Requirements
- Subleasing Collocation Space Among CLECs
- Adjacent Collocation Definition
- Adjacent Collocation Terms and Conditions
- Limiting Obligations to Feasibility and Technical Standards
- Collocation of Switching-Capable Equipment
- UNE Demarcation Points in Collocation Situations
- Direct Connections of CLEC and Qwest Equipment
- Incorporating Technical Publications by Reference
- Safety Standards
- Deadline for Providing CLECs Certain Collocation Information
- Including Power Availability Information in Space Availability Reports
- Expansions of Space Available for Collocation
- Tours of Space-Limited Collocation Premises
- Providing Floor Plans for Space-Limited Premises
- Listing of Space-Limited Premises
- Reclamation of Space to Use for Collocation
- Unauthorized Access
- Facility Access
- CLEC to CLEC Interconnection
- Direct Connections
- Converting from Virtual to Cageless Collocation
- Subcontracting Construction

- Power Outages
- Performance Standards for Qwest Virtual Collocation Installations
- Providing Software Options and Plug-in Information to Qwest
- Cost for Virtual Collocation Maintenance and Repair
- Efficient Space Use
- Efficient Space Design
- Leasing of Collocated Equipment
- Early Access to Collocation Space
- Halting Non-Compliant CLEC Work
- Space Reclamation
- Use of Other Technologies
- Fiber Entrance Facilities
- Dual Entrance Facilities
- Dedicated Interoffice Transport
- ICDF Construction Charges
- Express Fiber Entrance Facilities
- Minimum Inspection Labor Charge
- Security Charges
- Prorating Preparation and Installation Charges; Contractor Selection
- Housekeeping Charges
- CLEC Order Changes; Impact on Intervals
- Space Reservation After Quote Delivery
- Timing Between Collocation Completion and Transport Orders
- Determining When Virtual Collocation is Complete
- Virtual Collocation Failure Notices and Repairs
- ICDF Repair
- Minimum Blocks for Termination Orders

The issues deferred or addressed elsewhere are:

- Reciprocal Compensation for Collocation Facilities Used for Interconnection. This issue is discussed in the *Consultative Report on Group 2 Checklist Items, Checklist Item 13 – Reciprocal Compensation, Including Collocation Costs in Reciprocal Compensation* section of this report.
- Collocation Costs-Deferred to the Utah Commission Cost Proceeding. This deferred issue is state-specific and therefore not discussed as part of the North Dakota report.
- Lack of Available Facilities— This issue is discussed in the *Consultative Report on Group 2 Checklist Items, Common Issues, Lack of Available Facilities* section of this report.
- APOTS-CFA Information—Deferred to SGAT General Terms and Conditions Workshop if not considered closed. Qwest states that this issue was resolved prior to the General Terms and Conditions Workshop

by including a "Ready for Service" definition in section 4 of the SGAT to include APOT-CFA as a criterion for Ready for Service.

The unresolved issues are discussed in the Workshop Report beginning on page 74. The issues include:

- "Product" Approach to Collocation
- Adjacent Collocation Availability
- Precluding Virtual Collocation at Remote and Adjacent Premises
- Cross Connections at Multi-Tenant Environments
- Listing of Space-Exhausted Facilities
- ICB Pricing for Adjacent and Remote Collocation
- Conversion of Collocation Type—Payment of Costs
- Recovery of Qwest Training Costs
- Removal of Equipment Causing Safety Hazards
- Channel Regeneration Charges
- Qwest Training Costs for Virtually Collocated Equipment
- Requiring SGAT Execution Before Collocation May Be Ordered
- Forfeiture of Collocation Space Reservation Fees
- Collocation Intervals
- Maximum Order Numbers

### **3. Analysis of evidence on unresolved issues**

#### ***a. "Product" Approach to Collocation***

This issue has two distinct aspects:

- Whether it was reasonable for Qwest to require application of the BFR process before making new forms of collocation (i.e., those not detailed in the SGAT) available; and
- How to address inconsistency between SGAT provisions and underlying technical and administrative documents to provide equipment specifications, administrative or procedural requirements for ordering, and the like.

AT&T objected to the BFR process, which it considered cumbersome, but failed to offer a suitable alternative. AT&T argued that the application of collateral and inconsistent requirements reflected what it called an attempt by Qwest to "productize" the services that it provides to CLECs. AT&T sought to withhold a certification of Qwest compliance with the Section 271 checklist until its collocation policies and performance requirements could be shown to be in compliance with its SGAT and interconnection requirements.

The facilitator recommended that Qwest could require application of the BFR process for new forms for collocation but further recommended the following addition to SGAT Section 8.1.1:

*Other types of collocation may be requested through the BFR process. In addition, where Qwest may offer a new form of collocation, Qwest may order that form as soon as it becomes available and under the terms and conditions pursuant to which Qwest offers it. The terms and conditions of any such offering by Qwest shall conform as nearly as circumstances allow to the terms and conditions of this SGAT. Nothing in this SGAT shall be construed as limiting the ability to retroactively apply any changes to such terms and conditions as may be negotiated by the parties or ordered by the state commission or any other competent authority.*

The facilitator recommended that waiting until every Qwest technical and other parallel document affirmatively agrees with every aspect of the SGAT is not functional and that it is wholly unrealistic to expect that such documentation be perfectly consistent with the contents of the SGAT. The facilitator recommended that the workshop on general SGAT terms and conditions should explore ways to establish a clear hierarchy of authorities in cases where inconsistencies exist between SGAT provisions and underlying technical and administrative documents. Pending that consideration, the facilitator recommended that Section 271 compliance need not await the rationalization of any documents that provide contradictory requirements or guidance on matters of central importance.

The NDPSC agrees with the facilitator's recommendation and finds that Qwest has modified its SGAT Section 8.1.1 to comply with the recommendation.

#### ***b. Adjacent Collocation Availability***

McLeodUSA argued that the adjacent collocation option should not be limited to situations where space has been exhausted. Qwest objected on the grounds that the FCC has specifically declined to require adjacent collocation where there remains collocation space in an existing structure. McLeodUSA did not respond to Qwest's argument, and provided no testimony to support its position.

The facilitator recommended there should be no requirement for Qwest to include the availability of adjacent collocation in the SGAT when existing space is available.

The NDPSC agrees with the facilitator's recommendation.

#### ***c. Precluding Virtual Collocation at Remote and Adjacent Premises***

AT&T objected to virtual collocation restrictions in the SGAT Sections 8.1.1.8, 8.2.7, 8.2.7.2, 8.4.6.1, and 8.6.5.1, and argued virtual collocation may be necessary in

remote locations where space limitations preclude physical collocation. AT&T also argued that both physical and virtual collocation is required under 47 C.F.R. § 51.323(a).<sup>49</sup> AT&T stated that the FCC does not distinguish between remote and other premises in determining when virtual collocation is to be required.

Qwest argued that if there is no room for physical collocation, then there could not "by definition" be any space for virtual collocation. Qwest quoted a recent FCC order addressing space limitations at remote premises:<sup>50</sup>

*We note that configuration of remote terminals may make it impossible for the incumbent to place collocators in separate space isolated from the incumbent's own equipment."*

The facilitator stated that Qwest has cited no evidence in the record to support a claim that a lack of space for physical collocation, even without physical separation of the Qwest and CLEC facilities, necessarily precludes every conceivable form of virtual collocation. The facilitator pointed out that Section 251(c) of the Act sets forth the obligation to provide physical collocation, and that virtual collocation is an option where technical reasons or space limitations make physical collocation "not practical."<sup>51</sup> The facilitator recommended the SGAT should be changed to assure that virtual collocation in remote locations is not precluded or limited to any greater extent in remote premises than it is at wire centers.

The Commission agrees with the facilitator's recommendation and finds that Qwest has made the recommended change to its SGAT at Sections 8.1.1.8, 8.2.7.1, 8.2.7.2, 8.4.6.1, and 8.4.6.2 of the SGAT.

#### ***d. Cross Connections at Multi-Tenant Environments***

AT&T argued that SGAT Section 8.1.1.8.1 placed inappropriate restrictions on access to the Network Interface Device (NID) in multi-tenant environments (MTEs). AT&T argued that Qwest's SGAT, by imposing collocation obligations in such cases, would deprive it of the right that the FCC has given a CLEC to "connect its loops, via its own NID, to the incumbent LEC's NID."<sup>52</sup>

Qwest considered the issue to be resolved based on its agreement not to require collocation "in MTE terminals located in or attached to customer-owned buildings where no electronic equipment, power, or heat dissipation is required."

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<sup>49</sup> 47 C.F.R. § 51.323(a) provides that "[a]n incumbent LEC shall provide physical collocation and virtual collocation to requesting telecommunications carriers."

<sup>50</sup> Order on Reconsideration at ¶107 (Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147).

<sup>51</sup> 47 U.S.C. § 251(c)(6).

<sup>52</sup> AT&T Brief at page 42, citing the *UNE Remand Order* at ¶¶ 230 and 233.

The facilitator stated that much of the debate about this issue missed the real point involved, which is the identification of reasonable limits and protections on CLEC access to Qwest equipment that commonly serves more customers than the ones a CLEC will serve. The facilitator recommended that Qwest's proposal is a sound solution to the general question of the non-application of collocation requirements to MTE terminals and that it is not necessary to add AT&T's proposed amendment to Section 8.1.1.8.1 of the SGAT.

The NDPSC agrees with the facilitator's recommendation.

#### ***e. Listing of Space-Exhausted Facilities***

AT&T sought a requirement that Qwest's notification to CLECs of premises that do not have remaining collocation space should include not only all wire centers but all other potential collocation premises including locations where CLECs have not asked about space.

AT&T, in its brief, argued that Qwest may not limit the information only to wire centers, let alone further limit it to wire centers that Qwest discovers to be full only as a result of providing a CLEC-requested space availability report for a particular wire center. AT&T cited 47 C.F.R. § 51.321(h), the FCC rule that AT&T believes to require the broadly scoped report that it asked for in its testimony.<sup>53</sup> The FCC rule at 47 C.F.R. § 51.321(h) provides that:

*Upon request, an incumbent LEC must submit to the requesting carrier within ten days of the submission of the request a report indicating the incumbent LEC's available collocation space available at each requested premises, the number of collocators, and any modifications in the use of the space since the last report. This report must also include measures that the incumbent LEC is taking to make additional space available for collocation. The incumbent LEC must maintain a publicly available document, posted for viewing on the incumbent LEC's publicly available Internet site, indicating all premises that are full, and must update such a document within ten days of the date at which a premises runs out of collocation space.*

Qwest argued that it has no duty to inventory even wire centers, absent a specific CLEC request, and said that 47 C.F.R. § 51.321(h), when read as an integrated whole, makes it clear that the FCC intended the web site requirement to consist essentially of a compilation of information gleaned through Qwest responses to CLEC requests. Qwest also argued that requiring it to maintain a list of all "premises" would require an unreasonable burden of inventorying the numerous places where a CLEC might request

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<sup>53</sup> AT&T Brief at pages 59 and 60.

collocation, including cable vaults, pedestals, and any other "structure" located on public right-of-way.

The facilitator stated that it is not reasonable to impose on Qwest the obligation to investigate every single place in its network where collocation could take place, and to do it at not greater than 10-day intervals in order to keep its web site current. The facilitator further stated that considering the mismatch between resource expenditure and benefits to be obtained, it becomes clear that the FCC had in mind a different use of the term "premises" in the context that is relevant here.

The facilitator recommended that Qwest's obligation to provide notice on the availability of collocation space should be limited to wire centers but that the obligation should apply whether or not there has been a CLEC requested space availability report. The facilitator recommended that Qwest SGAT Section 8.2.1.13 be amended to include the following:

*Notwithstanding the foregoing, the Qwest website will list and update within the 10-day period all wire centers that are full, whether or not there has been a CLEC requested availability report.*

The NDPSC agrees with the facilitator's recommendation and finds that Qwest has modified Section 8.2.1.13 of its SGAT in accordance with the recommendation of the facilitator.

#### ***f. ICB Pricing for Adjacent and Remote Collocation***

Qwest proposed that adjacent and remote collocation be priced on an individual case basis (ICB) under SGAT Sections 8.3.5 and 8.3.6. Qwest reasoned that its lack of experience in offering such forms of collocation necessarily precluded the development of standard prices. Qwest also noted that adjacent collocation could require new construction in widely varying and unpredictable circumstances.

AT&T argued that Qwest should be required to develop a standard list of adjacent and remote collocation offerings, which should, where possible, incorporate rate elements.

The facilitator determined that this proceeding cannot identify and price any standard forms of adjacent and remote collocation; however, neither should it conclude that there is no way to price such standard forms except under the SGAT's ICB approach. The facilitator recommended that SGAT Sections 8.3.5.1 and 8.3.6 should include the phrase "*except where the Commission finds that standard pricing elements can be reasonably identified and their cost determined.*"

The NDPSC agrees with the facilitator's recommendation and finds that Qwest SGAT Sections 8.3.5.1 and 8.3.6.1 have been modified in accordance with the facilitator's recommendation.

#### ***g. Conversion of Collocation-Type Payment of Costs***

JATO asked for the elimination of ICB pricing for collocation conversions type and JATO specifically objected to having to pay for the elimination of SPOT frames. It should be noted that JATO has not intervened in the North Dakota proceeding.

Qwest objected to eliminating provisions for recovery of its costs for these two activities.

The facilitator found there is no basis for concluding that the circumstances involved in converting among collocation types will be so similar as to support standard pricing. The facilitator also found that JATO supplied no evidence to support its claim about SPOT frames. The facilitator recommended that neither of JATO's pricing recommendations be adopted.

The NDPSC agrees with the facilitator's recommendation.

#### ***h. Recovery of Qwest Training Costs***

WCOM argued that SGAT Section 8.2.2.7, which allows Qwest to recover the cost of training its employees responsible for installing, maintaining, and repairing virtually collocated equipment, is unreasonable and should be stricken. WCOM stated that CLECs should themselves be able to provide the training to Qwest employees for CLEC virtually collocated equipment or contract with Qwest for it at "reduced rates."

Qwest argued it is proper for it to recover the costs of training related to equipment that a CLEC collocates that is unfamiliar to Qwest personnel.

The facilitator recommended that because Qwest must maintain and repair virtually collocated equipment, it should have the ability to identify and provide training reasonably required to perform those duties and that WCOM's request for "reduced rates" is unclear. The facilitator also noted that SGAT Section 8.2.2.8, which addresses maintenance and repair costs, explicitly limits Qwest's recovery to costs that are "reasonable," and that it might well be argued that such a limitation is implied even where it is not stated. The facilitator made no recommended change to the SGAT.

The NDPSC agrees with the facilitator's recommendation.

#### ***i. Removal of Equipment Causing Safety Hazards***

SGAT Section 8.2.3.10 allows Qwest to remove or correct non-compliant equipment problems at CLEC expense, provided it has given the CLEC a 15-day notice of Qwest's determination that such a problem exists.

AT&T, JATO, and McLeodUSA raised concerns about various provisions of this section.

Qwest agreed to change the section to:

- Limit its scope to nonconformance with NEBS Level 1 safety standards.
- Provide written notice detailing the requirement not met and the specific equipment involved.
- Attest by affidavit that all Qwest equipment at the office complies with the standard at issue.
- Acknowledge CLEC rights to pursue objections to the state Commission or a court.
- Allow more than 15 days to correct unsafe conditions, where required.

The CLECs did not respond whether their concerns were fully addressed by the Qwest changes.

The facilitator recommended that the CLEC proposed conditions beyond those that Qwest agreed to incorporate in the SGAT are not appropriate for inclusion.

The NDPSC agrees with the facilitator's recommendations.

#### ***j. Channel Regeneration Charges***

SGAT Section 8.3.1.9 allows Qwest to charge CLECs a "channel regeneration charge" when the distance from the leased physical collocation space or from the collocated equipment (for virtual collocation) to the Qwest network is of sufficient length to require regeneration. CLECs generally objected to paying for channel regeneration.

The facilitator recommended that the SGAT should be amended to include the sentence below to remove the right to charge for regeneration if another available location for collocation exists that would not require regeneration; however, where no such location exists, Qwest can charge for providing such regeneration:

*"Channel regeneration charges shall not apply if Qwest fails to make available to CLEC: (a) a requested, available location at which regeneration would not be necessary or; (b) collocation space that would have been available and sufficient but for its reservation for the future use of Qwest."*

The NDPSC agrees with the facilitator's recommendation and finds that Qwest has amended Section 8.3.1.9 in accordance with the recommendation.

***k. Qwest Training Costs for Virtually Collocated Equipment***

McLeodUSA requested that charges Qwest must incur for training under SGAT Section 8.3.2.2 should be prorated if more than one additional CLEC selects the same equipment type, and prorating should be on the basis of the number of equipment units of each CLEC involved.

Qwest responded that it had agreed to reduction by half for a second CLEC, but did not address why prorating should stop with the second CLEC.

The facilitator recommended the last sentence of Section 8.3.2.2 should be revised to read:

*Where more than one CLEC in the same metropolitan area selects the same virtually collocated equipment, the training costs shall be prorated to each according to the number of CLECs selecting.*

The NDPSC agrees with the facilitator's recommendation and finds that Qwest has added the recommended language in Section 8.3.2.2 of the SGAT.

***l. Requiring SGAT Execution Before Collocation May Be Ordered***

JATO objected to a requirement that a CLEC first execute the SGAT before it may begin the process of collocation ordering.

The facilitator recommended that Qwest should make a demonstration that the SGAT will not preclude collocation ordering (with reasonable cost protections for Qwest) before the SGAT has been executed.

The NDPSC agrees with the facilitator's recommendation. At the hearing before the NDPSC on July 23, 2001, Qwest provided reference to its policy for parallel processing of collocation orders which allows CLECs to place collocation orders under a "letter agreement" with Qwest that spells out the parties' rights and obligations pending approval of the Interconnection Agreement by the state commission. The Commission finds that Qwest has made the demonstration recommended by the facilitator and adopted by the Commission.

***m. Forfeiture of Collocation Space Reservation Fees***

AT&T objected to the requirement of SGAT Section 8.4.1.7.4 that CLECs forfeit the nonrecurring collocation space reservation fee upon cancellation of the reservation.

Qwest responded partially to CLEC concerns by reducing the deposit subject to forfeiture from 50 to 25 percent of the nonrecurring charges applicable to the space reserved. Qwest also added a new SGAT Section 8.4.1.8, which provides a lower cost way to provide some of the benefits of space reservation. Qwest conceded that it does

not bear the same costs when it abandons reserved space. Qwest defended the 25 percent forfeiture because: (1) Qwest has to commit resources to respond to reservation requests; (2) the forfeiture acts as an inducement for CLEC not to warehouse space inefficiently; and (3) the forfeiture will inhibit the development of a secondary market for reserved space.

The facilitator determined that Qwest's proposal is supported by both the need for recovery of actual costs and the prevention of wasteful or inappropriate use of space reservations. The facilitator noted that the FCC recognizes that measures to prevent wasteful warehousing of collocation space are appropriate.<sup>54</sup> The facilitator recommended that Qwest's SGAT provision is appropriate.

The NDPSC agrees with the facilitator's recommendation.

#### ***n. Collocation Intervals***

On August 10, 2000, the FCC released its *Collocation Reconsideration Order*,<sup>55</sup> which established a national standard for processing physical collocation applications and provisioning physical collocation arrangements. The FCC required that, "except to the extent a state sets its own collocation provisioning standard or an interconnection agreement between an incumbent LEC and a requesting carrier sets an alternative standard, an incumbent LEC must complete physical collocation provisioning within 90 calendar days after receiving an acceptable collocation application."<sup>56</sup> The FCC further stated that its goal in issuing the *Collocation Reconsideration Order* "was to ensure that incumbent LECs provide physical collocation on terms that are just, reasonable, and nondiscriminatory in all states, rather than just those states that have established their own application processing and provisioning standards for physical collocation."<sup>57</sup> The FCC did not set virtual collocation intervals.<sup>58</sup>

Qwest filed a request with the FCC for waiver of the physical collocation provisioning intervals. Qwest requested either a 45-day or a 90-day interval when the requesting carrier has provided a collocation forecast and provisioning intervals ranging from 90 to 240 days when the requesting carrier has not provided a timely collocation forecast. The longest provisioning intervals were for arrangements requiring the installation of a power plant, diesel generator, or heating, ventilation, or air conditioning

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<sup>54</sup> See 47 C.F.R. § 51.323(f)(6).

<sup>55</sup> See Order on Reconsideration and Second Further Notice of Proposed Rulemaking and Fifth Order Notice of Proposed Rulemaking, *Deployment of Wire Line Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 98-147, FCC 00-297, Paragraph 64 (Released August 10, 2000) (*Collocation Reconsideration Order*).

<sup>56</sup> *Id.* at ¶ 29.

<sup>57</sup> *Id.* at ¶¶ 20-22.

<sup>58</sup> *Id.* at ¶ 32.

equipment. On November 7, 2000, the FCC released an *Amended Order*<sup>59</sup> that clarified its earlier decision, and granted waivers during an interim period of the 90-day provisioning interval set in the *Collocation Reconsideration Order*. The waiver provided for an interval of no more than 150 calendar days when the CLEC fails to provide a forecast. The FCC stated that granting of the interim waivers would give the states time to evaluate whether different intervals are more appropriate in their states.<sup>60</sup> The FCC also stated that by granting the waivers, the FCC was in no way retreating from its determination that a national standard for such intervals is essential in the absence of state commission action of such intervals.<sup>61</sup> Also in the *Amended Order*, the FCC stated that Qwest need not file SGAT or tariff amendments to incorporate the national standards for physical collocation provisioning intervals set in the *Collocation Reconsideration Order* in those states where Qwest would implement the interim physical collocation provisioning intervals.<sup>62</sup> On November 27, 2000, Qwest filed a revision to its SGAT to implement the interim intervals effective January 21, 2001.

In this 271 proceeding, Qwest's proposed SGAT sections 8.4.2.4.1, 8.4.2.4.2, 8.4.3.4.1, and 8.4.3.4.2 contain a 90-day provisioning interval for physical and virtual collocation when Qwest receives a forecast at least 60 days in advance of a complete collocation application. Failure to provide a timely forecast extends the provisioning interval to 120 days under SGAT sections 8.4.2.4.3, 8.4.2.4.4, 8.4.3.4.3, and 8.4.3.4.4. For physical and virtual collocation requests involving major infrastructure modifications and where no forecast is provided, Qwest's SGAT Sections 8.4.2.4.5 and 8.4.3.4.5 provide a 150-day provisioning interval. Qwest's SGAT Sections 8.4.2.4.6 and 8.4.3.4.6 provide that for physical and virtual collocation requests involving major infrastructure modifications where a forecast is provided, Qwest will attempt to meet the 90-day provisioning interval, but if Qwest is unable to meet the interval, it may seek waiver from the state commission to extend the interval.

Qwest's proposed SGAT Sections 8.4.4.4.1 and 8.4.4.4.2 contain a 45-day provisioning interval for interconnection distribution frame (ICDF) collocation when Qwest receives a forecast at least 60 days in advance of a complete collocation application. Failure to provide a timely forecast extends the provisioning interval to 90 days under SGAT Sections 8.4.4.4.3 and 8.4.4.4.4.

The parties went to impasse over whether Qwest could extend the interval it takes to provision physical or virtual collocation when the CLEC fails to submit a forecast.

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<sup>59</sup> Memorandum Opinion and Order, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, DA 00-2528 (released November 7, 2000). (*Amended Order*)

<sup>60</sup> *Id.* at ¶ 11.

<sup>61</sup> *Id.* at ¶ 9.

<sup>62</sup> *Id.* at ¶ 20

In addition, AT&T proposed a number of changes to the SGAT language addressing virtual collocation (Section 8.4.2), physical collocation (Section 8.4.3), and ICDF collocation (Section 8.4.4). These changes include:

- Changing from 45 days to 60 days the deadline by which CLEC equipment must be delivered for virtual collocation.
- Providing in the case of all forms of collocation that Qwest must use best efforts to minimize the interval provided in those cases where it permitted to extend the standard intervals.
- Requiring Qwest to complete forecasted virtual and physical collocations requiring major infrastructure modifications in the 90-day interval.
- Requiring Qwest to complete unforecasted virtual and physical collocations within the same intervals as apply to forecasted ones (90 days from completed application receipt), unless Qwest demonstrates insufficient space, power, or HVAC, in which case 120 days would be allowed. In the case when major infrastructure modifications are required, including conditioning space, permits, DC Power Plant, Standby Generators, Heating, Venting or Air Conditioning Equipment, Qwest would be allowed 150 days unless contested by the CLEC.
- Allowing the ICDF interval to increase from 45 to 90 days if unforecasted, but only if there is insufficient existing ICDF space or space to add additional ICDFs in an amount sufficient to meet all forecasted needs.

The facilitator agreed with AT&T that an increase in the provisioning interval for physical and virtual collocation for failure to forecast should be allowed only where there is inadequate space, power, or HVAC capability. The facilitator rested his decision on the premise that the SGAT should not punish CLECs for "a failure to provide perfect foresight" and that the FCC cannot be read as having given blanket authorization to interval extensions in a case of a failure to forecast. The facilitator did however state that "[i]t is true that the lesser the quality of CLEC forecasting the greater will be Qwest's difficulty in responding to collocation requests." For ICDF collocation, the facilitator made no change to Qwest's revised proposal of 90 days for unforecasted applications and 45 days for forecasted applications.

Also, the facilitator recommended that AT&T's space, power, and HVAC limits on extending virtual, physical, and ICDF collocation should be incorporated into SGAT Sections 8.4.2, 8.4.3, and 8.4.4, but recommended that Qwest retain the right to petition to extend the period for forecasted collocations that will require major infrastructure modification.

On October 26, 2001, Qwest filed a revised SGAT with the NDPSC setting forth the following provisioning intervals:

- For forecasted virtual collocation requests: 90 days, or 45 days after the CLEC Equipment Delivery Date.

- For unforecasted virtual collocation requests not requiring major infrastructure modifications: 120 days, or 45 days after the CLEC Equipment Delivery Date
- For forecasted virtual collocation requests requiring major infrastructure modifications: 90 days (may seek waiver from NDPSC for longer interval).
- For unforecasted virtual collocation requests requiring major infrastructure modifications: 150 days when uncontested by CLEC.
- Deadline by which CLEC equipment must be delivered for virtual collocation: 53 days.
- For forecasted physical collocation requests: 90 days
- For unforecasted physical collocation requests: 90 days
- For forecasted physical collocation requests requiring major infrastructure modifications: 150 days when uncontested by CLEC.
- For unforecasted physical collocation requests requiring major infrastructure modifications: 150 days when uncontested by CLEC.
- For forecasted ICDF collocation requests: 90 days.
- For unforecasted ICDF collocation requests: 90 days.

The North Dakota legislature has been very clear that it does not want, or intend, to give the NDPSC any authority under the telecommunications law except authority that the legislature specifically provides. The NDPSC has only such powers in the regulation of public utilities as have been conferred upon it by the legislature.<sup>63</sup> The NDPSC has general authority over connections between telecommunications companies.<sup>64</sup> However, the legislature has limited that general authority in some aspects relating to the Act, in that the NDPSC's general authority is limited to approval or rejection of interconnection agreements under sections 251 and 252 of the Act<sup>65</sup> and to receiving and approving or rejecting a statement of generally available terms under section 252(f) of the Act.<sup>66</sup> The legislature further limited the NDPSC's authority under a North Dakota law which authorizes the NDPSC to adopt rules consistent with state law to carry out the provisions of these specific sections dealing with the Act, but provides that the rules "*may not impose obligations on a telecommunications company that are different or greater than obligations imposed under the act.*"<sup>67</sup> Under North Dakota law, when a general provision of a statute is in conflict with a special provision in the same or in another statute, and the conflict is irreconcilable, the special provision prevails and is construed as an exception to the general provision unless the general provision is enacted later and it is the manifest intent of the legislature that the general provision should prevail.<sup>68</sup> It should be noted that the special limitations contained in N.D.C.C. §§

<sup>63</sup> *Williams Electric Cooperative, Inc. v. Montana-Dakota Utilities Co.*, 508 N.W.2d 508 (N.D. 1956)

<sup>64</sup> N.D.C.C. § 49-21-09

<sup>65</sup> N.D.C.C. § 49-21-01.7(9)

<sup>66</sup> N.D.C.C. § 49-21-01.7(10)

<sup>67</sup> N.D.C.C. § 49-21-01.7(14), (italics added)

<sup>68</sup> N.D.C.C. § 1-02-07

49-21-01.7(9), 49-21-01.7(10) and 49-21-01.7(14) relating to interconnection were enacted later than the general language contained in N.D.C.C. § 49-21-09.

Rules that are adopted by an administrative agency in North Dakota have the force and effect of law.<sup>69</sup> Since the NDPSC has no authority to adopt rules that impose obligations on a telecommunications company that are different or greater than obligations imposed under the Act, it likewise has no authority to issue an order that would impose obligations that are different or greater than the Act.

Based on the ND law discussed above and the proposals in this proceeding, the NDPSC recommends the following:

- Qwest's proposed provisioning intervals for virtual collocation requests are acceptable since neither the FCC nor the state has adopted standards for virtual collocation provisioning.
- Qwest's proposed 90 day provisioning interval for forecasted or unforecasted physical collocation requests that do not require major infrastructure modifications is consistent with the FCC interim national standards and is acceptable.
- For forecasted physical collocation requests requiring major infrastructure modifications, Qwest's proposed 150 day provisioning interval is not consistent with the FCC interim national standards. The NDPSC recommends the provisioning interval be changed to 90 days to be consistent with the FCC interim national standard since the state has not adopted its own standards.
- Qwest's proposed 150 day provisioning interval for unforecasted physical collocation requests requiring major infrastructure modifications is consistent with the FCC interim national standards and is acceptable.
- For forecasted ICDF collocation requests, Qwest's proposed 90-day provisioning interval is not consistent with the FCC interim national standards. The NDPSC recommends the provisioning interval be changed to 45 days to be consistent with the FCC interim national standard and the Facilitator's recommendation since the state has not adopted its own standards.
- Qwest's proposed 90 day provisioning interval for unforecasted ICDF collocation requests is consistent with the FCC interim national standards and is acceptable.

The NDPSC finds that Qwest, in its North Dakota Fourth Revision dated February 19, 2002, has changed the provisioning interval for forecasted physical collocation requests requiring major infrastructure modifications from 150 days to 90 days as recommended by the NDPSC. This was accomplished by removing SGAT Section 8.4.3.4.5, which had provided for the 150-day interval thereby reverting to the 90-day interval provided by Section 8.4.3.4.1. In addition, SGAT Section 8.4.3.4.6 was

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<sup>69</sup> N.D.C.C. § 28-32-06

added to retain the 150-day interval for unforecasted physical collocation requests requiring major infrastructure modifications.

The NDPSC finds that Qwest, in its North Dakota Fourth Revision dated February 19, 2002, has revised Section 8.4.4.4 to change the provisioning interval for forecasted ICDF collocation requests from 90 days to 45 days as recommended by the NDPSC.

***o. Maximum Order Numbers***

SGAT Section 8.4.1.9 limits Qwest's obligation to meet collocation orders to 5 orders per CLEC per state per week.

The facilitator recommended that Qwest should have the opportunity to adjust collocation intervals when the workload becomes unmanageable, however, he was concerned that 5 orders from one CLEC in a single state, whatever their complexity and whatever else is happening across the rest of Qwest's 13 states, would not serve well as an expression of the level of work that Qwest can reasonably be expected to accommodate. He recommended the parties propose SGAT language in their response to the Report. He further suggested the proposals address the following criteria:

- Why any state-specific (as opposed to regional or sub-regional) limit should be considered to comport fully with the way that Qwest responds to collocation requests.
- How the FCC's sound recognition that complexity of the applications is material should be reflected in any provision granting Qwest relief from established intervals.
- Why an argument that rejects any defined standard of relief (i.e., one expressed in terms of a specific language proposal) should not be viewed as justifying a default to another defined standard, however liberally expressed.
- Whether between the end-points of the application frequency cited by Qwest (34 to over 800 per month across the region) lies the level of applications to which Qwest can be expected to respond.

AT&T submitted proposed SGAT language that did not adjust collocation intervals but rather required Qwest to demonstrate to the Commission that a failure to meet collocation intervals was due solely to the fact that Qwest received an extraordinary number of complex collocation applications within a limited timeframe. Because AT&T did not participate in the hearing before the Commission, it did not specifically address the facilitator's criteria for its proposal.

Qwest proposed retention of the existing SGAT language that limits Qwest's obligation to meet the collocation intervals to a maximum of 5 collocation applications per CLEC per week per state. Qwest states that although the issue of collocation workload is somewhat of a regional issue, the SGAT is a state-specific contract.

Therefore, Qwest can only address this issue through state specific limitations. It is unreasonable to expect that North Dakota CLECs or customers should accept a unilateral limit on North Dakota collocation applications because of a large number of CLEC applications in another state. Qwest's proposal strikes a balance between the regional nature of this issue and each state's specific interest in accommodating collocation requests within that state.

Because of the significant variance in the nature and complexity of collocation requests, it is not reasonable in the context of SGAT language to develop a formula that would determine interval relief based upon a rating of collocation complexity. This would add a further level of administrative and discretionary decision making which would unnecessarily complicate the process and undoubtedly lead to disputes. Qwest's request to address collocation intervals is directed to deal with unusually large volumes in a short time period. Each month, Qwest receives collocation requests that have varying levels of complexity. Therefore, Qwest's staff is prepared to handle a reasonable number of complex orders within an anticipated level of requests. The difficulty, however, arises when the expected number or orders increases substantially which include the normal proportion of complex orders. Limitations in those situations are necessary to allow Qwest to adequately manage its workload. Although order limits cannot be designed to address every situation, Qwest's proposal is a reasonable method of dealing with unexpected large volumes of collocation requests.

Qwest's proposal does not reject a defined standard and therefore the third criterion of the facilitator's report is not applicable for review of Qwest's proposal.

Qwest presented an exhibit in its comments showing that with the exception of March and April 2000, Qwest received between 115 and 385 collocation applications per month region wide. Qwest's performance data also shows that the number of collocation applications is stabilizing and, if anything, decreasing. Qwest must have staff employees to meet "reasonably foreseeable demand" which Qwest estimates to be about 300 collocation applications per month or approximately 70 applications per week. If one CLEC withholds its order and submits 5 collocation applications in 5 of the Qwest states simultaneously, that one CLEC alone will use 35% of Qwest's capacity to process collocation applications for that week. Qwest testified it serves 114 CLECs across its 14-state region of which approximately 82 request collocation. One or two CLECs should not be allowed the opportunity to absorb all of Qwest's collocation provisioning capacity, to the detriment of the other 80 CLECs, by failing to plan and stage collocation applications.

The NDPSC finds Qwest's proposal is a reasonable limit to provide some measure of protection against unmanageable workloads without unduly restraining the activities of CLECs. The NDPSC recommends that Section 8.4.1.9 of the SGAT is appropriate.

#### **4. Conclusion**

Qwest should be deemed to be in compliance with the requirements of Checklist Item 1 – Collocation.

### **C. Checklist Item 11 – Local Number Portability**

#### **1. Background**

Local number portability is the ability of customers “to retain at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one service provider to another.”<sup>70</sup> Section 271(c)(2)(B) of the Telecommunications Act, or Checklist Item 11, requires Qwest to comply with the number portability regulations adopted by the FCC. Section 251(b)(2) requires all LECs “to provide to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.”

#### **2. Overview**

The parties raised a total of 14 issues for discussion on Checklist Item 11 — Local Number Portability. Of those issues, 13 were resolved between the parties. One issue went to impasse and was presented to the NDPSC with the facilitator’s proposed resolution. In addition, several parties filed testimony on issues not related to the SGAT. Sprint’s testimony contained specific concerns about Qwest’s ability to port numbers; however, Sprint failed to follow up on those concerns and in fact did not submit any argument at all on number portability.

NextLink noted an issue associated with coordinated cutovers of unbundled loops and local number portability but believes these are primarily performance issues that will be addressed by the ROC and delayed submitting any testimony on the issue until the Commission evaluates Qwest’s performance during ROC testing.

The Wyoming Consumer Advocate staff also discussed local number portability and stated it did not know if the SGAT will alleviate past problems until competitive companies have some experience with Qwest pursuant to the SGAT terms and conditions. This argument was addressed in the Common Issues portion of the facilitator’s Report.

The issues resolved between the parties are discussed in the facilitator’s Report on Checklist Item 11 beginning on page 98. The resolved issues include:

- Restricted Numbers

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<sup>70</sup> 47 U.S.C. § 153(30)